

NEW PUBLICATIONS.

CONSTITUTIONAL ESSAYS.

STUDIES IN CONSTITUTIONAL LAW. France; England; United States. By Emile Boutmy. Translated from the second French edition by E. M. Dickey. With an introduction by A. V. Dicey, B. C. L. 12mo, pp. 180. *M. L. Steiner & Co., Philadelphia.*

In these essays M. Boutmy has examined the organic laws of France, England and the United States, with a view to exhibiting their fundamental differences, and to the ascertainment of the causes of these radical distinctions. Beginning with the unwritten Constitution of England, he endeavors to show how the freedom from sudden and violent revolutionary changes which that country has enjoyed so long is due to the consistency and also to the vagueness of the constitution. The latter being embodied, not only in a few great contracts like Magna Charta and the Bill of Rights, but in a long succession of Acts of Parliament and common law rulings and precedents, it is at once easy to introduce changes into it and difficult to get at it for purposes of hostile criticism. A written constitution by its very form invites scrutiny. An unwritten one, much of which is moreover buried in the mass of the statutes, evades examination. The English, M. Boutmy holds, have wisely preferred the indeterminate constitutional form, since it has served them well in the past and down to the present time. What, however, seems not to perceive clearly is that the written Constitution of the United States has undergone scarcely more vicissitudes than the unwritten law of England, whereas the written Constitutions of France have been set up by the score since the Revolution, only to be overthrown as quickly.

These facts argue the operation of agencies whose genesis cannot hopefully be sought altogether in the character of the different constitutions concerned. M. Boutmy comes very near a right solution of the problem when he remarks that one serious difficulty in France has been the complete divorce from the past which the Revolution effected. With that movement tradition was extinguished. Thenceforward the Nation had no dependence but upon the creations of the day. If a new constitution proved defective, if it was assailed fiercely before it could be got into working order, it fell, and fell wholly, leaving in its place nothing but anarchy. In England, on the contrary, there has been no severance with the past. Tradition constitutes a great and vital part of the English Constitution, which is so imbedded in law and custom that it becomes second nature to the people in many if not most respects. But any comparison between the constitutions of the three countries concerned must show that besides custom and education differences of race character count for much. It is, for example, hardly thinkable that the French should have succeeded in living under a constitution like that of England. As M. Boutmy observes, their genius is for system. They cannot rest content with vague or indeterminate legislation. Their constitutions must be scientifically adjusted and completed, providing for everything, leaving neither rights nor obligations to inference; supplying a complete governmental machinery, exactly balanced in every part.

The English Constitution would be intolerable to a people so constituted. Their first impulse would be to adapt it to their own ideas; and in doing so they would necessarily change its character, and deprive it of all the safeguards which make it what it is. What the French would do with a constitution modelled upon that of the United States is sufficiently indicated in the treatment they have bestowed upon the numerous Constitutions drawn, accepted and then destroyed since 1789. But here again comes in the race factor. The United States Constitution undoubtedly has defects, and more than once or twice some of these defects have caused grave embarrassments and complications. Almost any nation less disciplined and rooted in reverence for law than the American people would have been drawn into calamitous and perhaps fatal conflicts by such events. The American people have not been so led, mainly because they inherited a patience, a political flexibility, and an abiding confidence in their ability to solve all governmental problems by means of the machinery they themselves had devised. Moreover, it must be realized that the importance of the race factor necessarily increases with the spread of democracy. England and the United States, and France also during the last century, are democratic States. In neither of them is the existing political condition the result of monarchial or absolutist principles or ideals. Each is what it is mainly by virtue of the temper, tendencies and habits of the respective peoples. In all three, therefore, racial characteristics enter largely into the question of constitutions.

M. Boutmy fully recognizes the incidence of the democratic spirit in speculating upon the future of England and the United States. He anticipates great changes in both countries, and perhaps more especially in England. Americans will scarcely agree with him that France attained, a century ago, the position as regards democracy which the United States has since been slowly working up to. The growth of centralization in this country may strike an intelligent foreigner as having greater significance than it really possesses. Nor is there any real analogy between the systems by which democracy is applied in the two countries. The fact that since the Revolution the national spirit has been dominant in France, has facilitated there a centralization so complete that administration as under the Empire presents few difficulties from administration as under the Republic. But in the United States the very nature of the union between the States rendered the growth of such a sentiment impossible from the beginning, and such a change in popular thought as could alone render possible the adoption of the French system is not within the bounds of sober discussion. "Sooner or later," however, observes M. Boutmy in his prophetic mood, "all nations will go through the conditions on which, in 1789, the French political system arose. By the slow action of these causes we see that in England, as well as in America, democratic equality and national homogeneity are growing side by side, and are bringing about the day, which is still distant, but inevitable, when these two countries will possess a simple political constitution founded on law, that is, on the express will of the numerical majority. Law will then be founded on logic alone, and logic, left mistress of the field by the gradual retreat of tradition and custom, will express its will and find its satisfaction in systematic ideas. Logic will in consequence be forced to rely on its own resources alone, and from these, combined with a more complete and minute knowledge than now exists of the objects aimed at by a constitution, will have to provide those checks on sudden change which policy now draws from custom, tradition and other sentiments which do not originate in the rational part of human nature, but are derived from past history."

We prefer M. Boutmy as an analyst. His studies of the three constitutions are acute and sometimes profound. His point of view is all the more interesting from the fact that it is thoroughly French. The conclusions which he reaches are not always justified by past experience, at least not to the Anglo-Saxon mind, but his interpretations of actual events and documents have the recommendation of freshness and strong intelligence. It is of course possible, as M. Boutmy thinks, that the distinctions between the three countries "may, after all, tend to disappear through partial and gradual assimilation"; but it is not probable that the course of either England or the United States will tend to an installation of French political experiments. Race and tradition are still mighty influences, and the first of these alone would probably determine the question.

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